In the Matter of Arbitration	)	OPINION AND AWARD
	)	
Between	)	
	)	
Virginia Education Association, Union	)	**BMS Case No. 16 - PA - 0010**
	)	
and	)	
	)	
Independent School District 706, Virginia, Minnesota, Employer	)	**Issued December 16, 2015**

Appearances:

For the Union: David Aron, Attorney, Education Minnesota, St. Paul, Minnesota

For the Employer: John M. Colosimo, Colosimo, Patchin & Kearney, Ltd., Virginia, Minnesota

Procedures:

The Undersigned was selected as Arbitrator in the present matter through the procedures of the Minnesota Bureau of Mediation Services. A Hearing was held in Virginia, Minnesota at the School District offices on October 29, 2015, commencing at 9 a.m. Court reporter Mary J. Fregin, Braden Undeland, Duluth, Minnesota, made a transcript of the proceedings. Exchange and submission of Post-Hearing Briefs occurred on November 30, 2015; part of the Union's submission was a document called "Addendum A," to which the Employer's counsel objected by letter of December 4, 2015. Counsel for the Union replied to the objections in a letter of December 8, 2015, closing the record in this Matter.

The Parties

The Union is the Virginia affiliate of Education Minnesota, the statewide teachers' union. The Employer is the local public school district in the City of Virginia, Minnesota. They are signatories to a collective bargaining agreement running from July 1, 2015 through June 30, 2017.

Pertinent Contract Language

Language from the current collective bargaining agreement relating to health insurance reads as follows:

Article VIII, Section 2. Health, Hospitalization and Dental Insurance.

Subd. 1 Single Coverage Effective 09-01-06 the School Board shall contribute the full cost minus $25 toward the premium for individual coverage for each full time teacher employed by the School District who qualifies for and is enrolled in the School District group health and hospitalization plan. Effective 09-01-08 the School Board shall contribute 95% minus $25 per month toward the premium for individual coverage for each full time teacher employed by the School District who qualifies for and is enrolled in the School District group health and hospitalization plan. (This includes current employees employed .8 FTE or greater as well as all retirees receiving district paid health and hospitalization insurance as well as future retirees.)

Subd. 2 Family coverage The School Board shall contribute 70% minus $25 per month toward the premium cost for family coverage for each full-time teacher who qualifies for and is enrolled in the School District health and hospitalization plan who qualifies for family coverage. (This includes current employees employed .8 FTE or greater as well as all retirees receiving district paid health and hospitalization insurance as well as future retirees.)

…….

…….

Subd. 4 Dental Insurance The District will provide $20.00 per month toward one District dental plan.

Subd. 5 The exclusive representative agrees to hold harmless I.S.D. 706 from any and all claims of

discrimination or unfair treatment which may result from unequal compensation by I.S.D. 706 to medical insurance coverage.

How this controversy developed

Over the years, the employer has applied the insurance sections of Article VIII as follows: single employees are on the individual plan (for both health and dental); newly married couples both working for the School District keep that same coverage. When a child comes along, one spouse goes on the family plan with the child and other spouse as dependents. At that point, there is only one health insurance or dental plan premium toward which one district contribution is paid. It may seem logical that there is only one premium for family coverage, hence one contribution, while before there were two premiums, and hence two contributions. Or perhaps one of the contributions has simply evaporated. It seems to depend on whether one thinks the clause in Article VIII.2.subd. 2 beginning with "for each full-time teacher…" modifies the preceding verb "contribute" or the noun "coverage." It may be as simple as that. The employer's implementation of medical and dental insurance is consistent with the latter interpretation.

In any event, earlier in 2015, a training session was attended by some of the Virginia Education Association's leadership, including co-president Julie Sandstede. Evidently, the question of the disappearing second premium arose and aroused considerable interest. This interest was further piqued by reports that Arbitrator Christine Ver Ploeg had ruled in a case involving the Wrenshall Independent School District, that language similar to that in the Virginia collective agreement did mandate a second contribution in cases of two teachers married and both employed in that school district.

Naturally, the union maintains the Wrenshall case is strongly comparable, the employer demurs.

Neither party saw fit to submit a copy of Ms. Ver Ploeg's Opinion and Award, so this Arbitrator merely notes the claims and moves on.

The Grievance's road to the hearing was rocky, with the union claiming timeline violations by the employer which should per Article XIII.5510.5180, Subp. 3 trigger "mandatory alleviation of the grievance" as laid out in the union's latest form of the grievance. The employer argues that the matter was not grievable in the first place, so those provisions don't apply. Further, the employer argues that the grievance is not now arbitrable.

Is the grievance arbitrable?

The employer argues that the grievance cannot be arbitrable under the collective agreement's time limits---after all, the union must have been aware of the manner in which the insurance coverage was implemented for about 26 years. The Union argues that each occasion when the second contribution is not paid is a new "continuing violation."

When we turn to Holy Writ, we find "….the "continuing violation doctrine is especially viable for cases involving compensation, because it can be argued that each improper paycheck is a new violation." [Kenneth May, ed., *Elkouri & Elkouri: How Arbitration Works,* Seventh Edition, page 5-28]

Obligingly, the union cites a compensation case in which a practice 35 years old was held to be a timely grieved continuing violation. [*Ogdensburg Bridge & Port Authority and International Longshoremen's Assn.,* 133 LA 644, Fullmer, 2014] Especially given the size of the financial shock to the happy couple occasioned by their blessed event (as shown in the example below), and the fact that like all medical costs, that shock has probably grown rapidly in recent years, we may better understand the recent interest in an increased district contribution.

Conclusion: the grievance is arbitrable.

Analysis of the application of Article VIII, section 2

The Arbitrator introduces two hypothetical I.S.D. 706 teachers, Jack and Jill, with whom most of us are familiar from the literature of our childhoods. Now, they are grown-up and teaching at I.S.D. 706. Using current figures (or numbers derivable from those) from the union's Brief (at page 23), the table below shows the costs to all parties of the application of section 2 of Article VIII, as described earlier.

TALE: MONTHLY COSTS TO VARIOUS PARTIES AND PREMIUMS

	Situation	District contribution	Employee(s) Pay	Premium
1A	Jack single policy	591.08	57.43	648.51
1B	Jill single "	591.08	57.43	648.51
2	Married, no child (2 individual policies)	1182.16	114.86	1297.02
3	Jack or Jill family policy (Married, one child)	1185.65	543.85	1729.50
4	Divorced			
	Jill family policy	1185.65	543.85	1729.50
	Jack Individual "	591.08	57.43	648.51

In the table, lines 1A and !B show the district's contribution to the two individual policies, the amount Jack and Jill each pays, and the premiums. Remember, these are monthly figures.

Line 2 shows the same information, except for Jack and Jill as a two-person family, so the amount on line 2 equals the sum of the figures on lines !A and 1B. Line 3 shows what happens when Jack, Jr. joins the family. The family's insurance contribution at present rates goes up by roughly $430

monthly, or approximately $5160 annually.

Line 4 shows what would happen if Jack and Jill divorced and Jill got custody of Jack, Jr. Jill better hope that she gets some blood out of that turnip Jack, since she's looking at paying all of the employee's share of the family policy.

By coincidence, Line 4 also shows the effects of the only way that the spouse whose district contribution has disappeared in marriage could get that contribution under the system by which health insurance is bought and sold in the US: through one spouse having a family policy and the other an individual policy. This would of course make no sense for a married (as opposed to divorced) couple: as was said by witness Alison Vuicich: you'd pay more for the same insurance. Moreover, it is the Arbitrator's view that Human Resources wouldn't let a married couple do that: the district's costs would soar if they let them do that, as seen in the table.

The union's solution for this problem is laid out on page 23 of its brief [citations to exhibits or transcript omitted]:

"Under a strict reading of Article VII[I], section 2, subdivision 2, the grievants would be entitled to a separate District contribution of 70% of their family insurance premium costs. The dollar value of that contribution is currently $1,186.65. per month per elgible employee. The VEA recognizes that two district contributions, which would amount to $2,371.30, would exceed the overall cost of the family's family policy, which is currenbtly $1,729.50 per month. Instead the VEA seeks only the difference between the total cost of the monthly premiums and the District contribution to one elegible employee, which is currently $543.85 per month, or approximately 30% of the premium cost. This is less than the District contribution to an employee taking single coverage, which is currently $591.08 per month. The Union's proposed remedy allows the grievants a separate benefit without providing more than the total cost of her family's monthly premium payment. It is just, equitable and well within the Arbitrator's

authority to award."

It would also involve a drastic rewriting of Article VIII, section 2. As is common, the agreement provides that the Arbitrator shall not "amend, modify, add to or subtract from" the existing agreement. [Article XIII.5510.5170, subp. 3]. The union's remedy must be rejected, as involving one or more of those prohibited acts. The union is trying to get through grievance arbitration that which it might more appropriately seek at the bargaining table.

As matters stand, the employer's manner of implementation of Article VIII, section 2, subd. 2 is consistent with common business practice, not inconsistent with the general provisions of that section, and based in a constant practice of a quarter-century or more. As such, it clearly deserves to be recognized as a currently binding past practice (as does the handling of dental insurance). As the earlier table demonstrates, there are awkwardnesses and inconveniences that result, especially with the move to family coverage on birth or adoption of a child. But, again, the place to address these issues is at the bargaining table.

The contested Addendum A

The information in Addendum A submitted by the union with it brief would more properly have been submitted and examined at the hearing, and has played no role in this Opinion.

The "hold harmless" issue

The "hold harmless" provision of Article VIII, section 2, subd. 5 has been quoted earlier. Perhaps in deference to that language, union co-president Sandstede did not actually use the words "discrimination" or "discriminate," although she suggested that the situation was "unfair." [Transcript, pp. 83, 85, 87]

The principle of holding the employer harmless from allegations of discrimination or unfairness in matters of compensation might be thought to have applied to these present proceedings, but that is apparently not the case. At the Hearing, employer's counsel phrased a question about the subject this way: "Is the union prepared to indemnify the district in the event that the arbitrator rules in your favor?" [Transcript, pp. 86-7] (The answer is muddied up, unclear and not relevant.)

Expressio unius est exclusio alterius?

In Article VII, section 2, subd. 3 of the agreement, there is a provision dealing with the "VEBA 100" health plan that expressly provides for only one contribution to a family's health coverage. The union asks that the canon of contract interpretation just quoted must be applied to Subd. 2 and 4, where the limitation does not appear. Although this seems a clever argument, such cannot be done because we know nothing of "VEBA 100" except its acronym.

AWARD

The grievance is arbitrable and is denied in its entirety.

Given at Saint Paul, Minnesota this sixteenth day of December 2015.

_____

James G. Scoville, Arbitrator.